IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.626 OF 2006
WITH
COMPANY APPLICATION NO.934 OF 2006

Thermax Co-gen Limited .. Petitioner

WITH

COMPANY PETITION NO.627 OF 2006
WITH
COMPANY APPLICATION NO.935 OF 2006

Thermax Electronics Limited .. Petitioner

WITH

COMPANY PETITION NO.628 OF 2006
WITH
COMPANY APPLICATION NO.936 OF 2006.

In the matter of Scheme of Amalgamation of Thermax Co-gen Limited and Thermax Electronics Limited and Winman Gas Limited with Thermax Limited;

Winman Gas Limited .. Petitioner

Mr.Hemant Sethi i/b. Hemant Sethi & Co. for petitioner
Ms.K.V.Gautam, Actg.O.L. present
Ms.Madhavi Gaikwad i/b. P.Kapoor for R.D.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th January 2007.

P.C.

. These are three subsidiary companies which are going to be merged with M/s.Thermax Ltd., which is the transferee company. Petitioners are 100% subsidiaries of M/s.Thermax.

2. The scheme of Amalgamation with its salient features is set out in the petition. A copy of the scheme is also annexed to the petition. The necessary and relevant particulars including latest financial position are disclosed on oath. Petitioners have also set out relevant details and declarations. Thus there is due compliance with the provisions of law. It appears that transferor companies are not engaged in any specific business activity. Since, entire

share capital is held by the transferee company so also the scheme being framed and sanction sought for effective and smooth business operations, Mr.Sethi submits that the same be sanctioned.

3. The notice was duly served on the Regional Director and he has filed affidavits. The R.D. has called upon the petitioners to furnish requisite details for enabling him to arrive at a satisfaction that the scheme is not prejudicial to the interest of creditors, shareholders so also contrary to the public interest. He has filed affidavit in which he has referred to the report from ROC, copy of which is annexed to the affidavit. Further, he has referred to the objects of the scheme and the relevant provisions therein. Thereafter, he has stated on oath that the scheme is not prejudicial to the interest of creditors, shareholders and the public.

4. With regard to the pendency of certain proceedings, the R.D. has pointed out that one of the transferor company is involved in a litigation inasmuch as an appeal is pending in the Customs, Excise and Service Tax Tribunal. Mr.Sethi for petitioners has invited my attention to the affidavit of Meher Phiroze Padamjee and further affidavit of the same deponent wherein he has categorically stated that all pending liabilities including tax liabilities would be taken over by the transferee company in terms of the scheme. In such circumstances and considering the tax liabilities and penalty, in my view, no prejudice is likely to be caused because of the pendency of the said tax appeal. Having observed that the scheme is not prejudicial to the interest of the creditors and members so also public at large, even the R.D. cannot now raise any further objections.

5. The O.L. has also submitted his affidavit. It has been stated on the basis of the report of C.A. who has scrutinised the books of accounts and related papers, that the scheme is not contrary to the interest of shareholders, creditors and public at large. The C.A. has sought explanation of relevant queries including bad debts being written off and the said queries are duly answered.

6. I am satisfied from a perusal of the petition and the annexures so also the aforesaid affidavits that no prejudice will be caused if the scheme as proposed by the petitioners is sanctioned.

7. Accordingly, the Company Petition No.626 of 2006, Company Petition No.627 of 2006 and Company Petition No.628 of 2006 are made absolute in terms of prayer clause (a). Cost of ROC and O.L. quantified at Rs.2,500/- each. Drawn up

order dispensed with. All concerned to act on authenticated copy of this order.

(S.C.Dharmadhikari, J)